

ELECTION/RESPONSE

This communication is responsive to the Office Action mailed on February 4, 2009, in which all pending claims 1-50 were subject to restriction and election of species. Claim 28 is amended to fix a clerical error and claim 40 is amended to be dependent on claim 28. Claims 1-50 remain pending. No new matter is presented. The Applicants thank the Examiner for the telephone interview on March 12, 2009. The Examiner clarified several aspects of the restriction requirement. No agreement was reached during the interview.

The Office Action states that the Application claims four distinction inventions. Applicant elects, with traverse, Group I, which corresponds to claims 1-18 and 48. Further, within Group I, two species elections were required. Applicants elect the species of claim 18, with traverse and the species corresponding to GDF-5, without traverse.

Independent claim 1 of Group I identified by the Examiner is directed to a method of coating of a device with a substance. The method comprises the steps of (a) contacting the device into a solution of the substance, and (b) drying the device while being in contact with the solution.

Independent claim 28 of Group III is directed to a packaging container for device where the packaging container is adapted such that the device is coatable with a substance directly within the packaging container by contacting the device into a solution of the substance and drying the device while being in contact with the solution. In other words, this packaging container is adapted such that the device is first coated within the container and then the device is kept in the container so that it becomes a packaging container.

The Examiner is apparently asserting that Groups I and III lack unity because the invention as recited in claim 1 is anticipated by the prior art, relying on WO03/043673 ('673 Application) as evidence of the lack of novelty of claim 1. However, this reference does not disclose the invention as recited in claim 1. Specifically, the '673 Application relates to a device having osteoinductive and osteoconductive properties. In paragraph bridging pages 6 and 7 of the '673 Application, a method for the production of an osteo-a device is described. According to this method, a coating solution is provided. Then, step (c) of this method allows homogeneous coating of the surface of a carrier with a dissolved protein. Finally, the coated carrier obtained in step (c) is dried. However, there is no indication that the drying of the device

is performed while the device is in contact with the solution. Therefore, the subject matter of the present invention is novel over the disclosure of this document and based on an inventive step.

Independent claim 1 of the present application recites that the coating of the device is obtained by contacting the device with a solution of the substance, and drying the device while it is in contact with the solution. As explained, for example, on page 27 with reference to Fig. 1, the device to be coated is inserted into a container which contains the solution of the substance so that the device is completely dipped into the solution. In this state, the drying process is performed which results in the device being coated. This is in contrast to prior art approaches in which the device to be coated is dipped into the solution of the coating substance, removed from the solution, and then dried in a subsequent step. Again, claim 1 relates to the method of coating a device and claim 28 relates to the packaging container that is adapted to be used in such coating method. Finally, the claims of Group IV relate to the product obtained by the method of claim 1, i.e. the coated device. Since it is the product obtained by the method of Group I, there is necessarily unity of invention.

For at least these reasons, at least Groups I, III and IV satisfy the unity of invention standards and should be examined together.

The Office Action further requires an election between the method recited in claim 1 and the method recited in claim 18. Applicants elect the species corresponding to claim 18, with traverse. The basis for requiring an election between an independent claim and one of its dependent claims is unclear, and therefore Applicants request that claims 1 and 18 be considered together. In the event that the requirement for election is maintained, claims 1-18 and 48 all read on this species, and claims 1-17 and 48 are generic with respect to the subject matter recited in both claims 1 and 18.

Examination of the application is requested.

Respectfully submitted,

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